

Update: Traffic Benchbook— Revised Edition, Volume 2

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.3 Chemical Tests Under the Vehicle Code’s “Implied Consent” Provisions—§625c

B. Administering Chemical Tests Under §625c

1. Advice That Must Be Given the Person Arrested

Insert the following case summary after the second bullet on page 2-12:

In *People v Green*, ___ Mich App ___, ___ (2004), the Court of Appeals acknowledged that defendant Green had been arrested, at least in part, for an OUIL violation and that he “should have been advised” of his right to an “independent” chemical test as stated in MCL 257.625a(6)(b)(i). However, the Court disagreed with Green’s assertion that the police officers’ failure to so advise him should result in dismissal of the OUIL charge. *Green, supra* at _____. The Court explained that an accused’s right to obtain an “independent” chemical test is premised on “the taking of a chemical test administered at the request of police officers.” *Green, supra* at ___, quoting *People v Dewey*, 172 Mich App 367, 373 (1988). The Court concluded that defendant Green was not entitled to an “independent” chemical test because his blood test was administered at the hospital at the direction of a medical doctor as part of his care. *Green, supra* at _____.

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.4 Search Warrants for Chemical Testing

B. Exceptions to Search Warrant Requirement

1. Blood Tests Taken After an Accident for Medical Treatment

Insert the following language near the top of page 2-25, immediately before subsection (2):

Admission of the results of the defendant's blood test was proper where the defendant, who was "incoherent, violent and assaultive, and not acting like a person who was simply under the influence of alcohol," was taken to a hospital for medical treatment and a doctor ordered the blood test in the course of treating the defendant. *People v Green*, ___ Mich App ___, ___ (2004). Applying the "relevant factors" set forth in *People v Keskimaki*, 446 Mich 240, 255–257 (1994), the Michigan Court of Appeals concluded that the facts in *Green* supported a finding that the defendant was a driver involved in an "accident" for purposes of MCL 257.625a(6)(e). Unlike the situation in *Keskimaki*, where there was no evidence of personal injury or property damage, there was substantial evidence of damage in *Green*. In *Green*, the defendant's car was missing a front tire, had damage to its rim, appeared to have traveled across an area of mud and grass, was smoking, and came to rest across several parking spaces in the complainant's parking lot. *Green, supra* at ____.